

1 **Proposed Provision for the Collection**
2 **of Tax on Fundraising Transactions**
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4 A. Any nonprofit or charitable organization [*as defined under the State's applicable*
5 *provisions, which may refer to IRC 501(c)(3), educational, religious or other specific*
6 *organizations*] making taxable sales of tangible personal property for fundraising shall
7 not be required to collect and remit sales tax due on such sales, provided the wholesaler
8 or distributor is registered with this State as a vendor.

9 Explanation and Commentary

10 Section A establishes that a nonprofit or charitable organization (as defined under each state's law) that sell
11 products as part of its fundraising activities will not have the responsibility for collecting and remitting
12 sales tax on those transactions that may be subject to sales tax. From the perspective of the AFRDS
13 members, with whom the Uniformity Committee is jointly working, the primary purpose of this proposal is
14 to place the obligation for sales tax collection on fundraising events on the vendor of the fundraising
15 products (wholesaler/distributor) and not on the organization conducting the fundraising event. (Section D,
16 below, places the sales tax collection and remittance obligation on the wholesaler/distributor.) The practical
17 effect of this proposal is to exempt from the sales tax the fundraising transaction between the fundraising
18 organization and the ultimate consumer.

19 This provision would not apply where all sales made by certain organizations are exempt from sales tax or
20 where certain products are already exempt from sales tax either generally or when sold for fundraising
21 purposes. One example of a circumstance under which this provision would apply to an organization that
22 has a sales tax exemption is where an organization makes fundraising sales beyond the dollar amount or
23 number of events exempt under State law. Thus, if a state allows nonprofit organizations to make tax
24 exempt sales at three fundraising events in a calendar year, and an organization holds a fourth fundraising
25 event, this provision would apply to relieve that organization from the obligation of collecting the sales tax
26 on sales made at the fourth and at any other fundraising events in the calendar year of measure.

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28 B. Purchases made by a nonprofit or charitable organization of tangible personal
29 property to be sold for fundraising are not to be treated as sales for resale requiring the
30 issuance of a resale exemption certificate.

31 Explanation and Commentary

32 Section B clarifies that when an organization purchases fundraising products, it need not provide the
33 vendor with a resale exemption certificate because the transaction will not be treated as a sale for resale. As
34 set forth in Section D, below, the transaction between the product vendor and the nonprofit or charitable
35 organization is the transaction subject to the sales tax and the fundraising organization consequently is
36 treated as the ultimate consumer.

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38 C. If a nonprofit or charitable organization purchases tangible personal property from a
39 wholesaler or distributor for resale for other than fundraising, the nonprofit or charitable
40 organization must register as a vendor with the State and collect tax on its sales of
41 tangible personal property for other than fundraising. The nonprofit or charitable
42 organization must also provide a resale exemption certificate for these purchases to
43 discharge the obligation of the wholesaler or distributor for collecting and remitting a
44 sales tax on the purchases by the nonprofit or charitable organization.

45 Explanation and Commentary

This proposal is intended to apply only to fundraising activities of nonprofit or charitable organizations. Section C establishes that for non-fundraising transactions, the organization is responsible for collecting and remitting sales tax and must provide product vendors with sale for resale exemption certificates where appropriate. The registration requirement would apply regardless of whether the nonprofit or charitable organization is located in the State, although these organizations are most likely already located in the States in which it is making its fundraising and non-fundraising sales.

D. The wholesaler or distributor of tangible personal property to a nonprofit or charitable organization making sales of the tangible personal property for fundraising shall collect and remit the sales tax measured by the selling price of such tangible personal property to the nonprofit or charitable organization. The wholesaler or distributor shall register as a vendor in this State and shall file a return and remit the total amount of taxes collected under this section [*in accordance with the collection/payment provisions of the State sales/use tax act*].

Explanation and Commentary

Section D shifts the tax collection obligation for fundraising transactions from the nonprofit or charitable organizations to the wholesaler or distributor of the fundraising products. AFRDS has represented that its membership is willing to accept the tax collection responsibility to relieve their customers from any tax collection burdens. Presumably, the wholesalers and distributors are willing to register regardless of whether they are located in the State as a trade-off for States using the wholesale price as the base for measuring the tax due. This Section D also contemplates that the wholesalers and distributors will file something like a composite sales and use tax return on which they will report the total amount of taxes collected from all of the in-state organizations for the appropriate tax period.

E. As used in this section:

1. “Wholesaler or distributor” means any person engaged in the sale of tangible personal property to a nonprofit or charitable organization that purchases the tangible personal property for fundraising.

Explanation and Commentary

This definition is broadly drafted to encompass anyone who sells products to a nonprofit or charitable organization that will be sold by the organization for fundraising purposes. This tax collection provision is limited to sales of tangible personal property and does not address sales of services or intangibles to or by nonprofit or charitable organizations.

2. “Fundraising” shall refer to the irregular or intermittent sale [*as defined by applicable State provisions*] by a nonprofit or charitable organization of tangible personal property for the purpose of obtaining funds from the public for the benefit of the organized purpose of the organization, provided fundraising does not include the sale of tangible personal property by a nonprofit or charitable organization in an unrelated trade, business or activity. Sales of tangible personal property by a nonprofit or charitable organization offered exclusively to its members and not to the general public shall not be considered fundraising under this provision.

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Explanation and Commentary

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This definition is intended to preclude regular sales transactions that may be made by nonprofit or charitable organizations. This draft tax collection provision would not apply to sales made by an organization through a retail store that is open and operating on at regular intervals (*e.g.*, daily or weekly). The term “irregular or intermittent” is taken from California Regulation 1597, Property Transferred or Sold by Certain Nonprofit Organizations, which defines that term to mean sales made at particular events (fairs, parades, *etc.*) not conducted on a regularly scheduled basis. Some states limit exempt fundraising transactions to a certain dollar amount or to a number of days in a calendar year and those States may wish to use these kinds of limitations in lieu of using “irregular or intermittent”.

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The AFRDS representatives have suggested deleting the exclusion for sales to an organization’s members because the definition could be read to exclude sales of products during a fundraising drive by PTAs to their parent or teacher members. The term “to its members” has been deleted and a sentence added to clarify that sales made only to a nonprofit or charitable organization’s members would not be considered fundraising sales. Example 2 under Section F below illustrates the purpose of this additional language.

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108 F. Examples.

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1. Boy Scout Troop A purchases twice in one year, candy, nuts and other items from Wholesaler/Distributor to be sold to the public to raise funds for an annual camping trip. Troop A is a nonprofit organization and does not sell candy in an unrelated trade, business or activity. Under this section, Wholesaler/Distributor is required to collect tax on the items sold to Troop A based on the sales price to Troop A. Troop A is not required to collect sales tax on the sales made to the public.

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2. A nonprofit fraternal organization located in State A occasionally purchases from T-Shirt Company clothing imprinted with the organization’s emblem to be sold to interested members. The sales to the members would not be considered fundraising sales. The fraternal organization would be required to collect and remit sales tax on the sales made to its members and provide a resale exemption certificate to T-Shirt Company. If the fraternal organization does not provide a resale exemption certificate, T-Shirt Company must collect the use tax due on the goods sold to the organization.